



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

JAN 23 2018

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article Number: 7014 1200 0000 6127 1828

Mr. Thomas Hayes, Esq.
Assistant General Counsel
Watco Companies LLC
315 W 3rd Street
Pittsburg, Kansas 66762

Re: Invitation for Pre-Filing Negotiations for the following GBW facilities:
Atchison Facility, RCRA ID Number: KSD043936277
Coffeyville Facility, RCRA ID Number: KSD046371027
Junction City Facility, RCRA ID Number: KSD010643666
Neodesha Facility, RCRA ID Number: KSD054085600
Omaha South Facility, RCRA ID Number: NED986369098
Omaha West Facility, RCRA ID Number: NED981117153

Dear Mr. Hayes:

On various dates between May 2016 and October 2016, the U.S. Environmental Protection Agency, Region 7 conducted inspections at the facilities cited above to determine their compliance with the requirements of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 – 6992k. Copies of the inspection reports were mailed to the respective facility representatives within two months of each inspection. Based on the EPA's review of information gathered during the inspections, violations of RCRA and underlying regulations have been documented.

Violations of RCRA

Violations of RCRA observed at the facilities include: (1) failure to conduct hazardous waste determinations; (2) operating as treatment, storage or disposal facilities without a RCRA permit or RCRA Interim Status in violation of the permitting requirements found at RCRA § 3005 due to the facilities' failure to comply with several conditions found at K.A.R. 28-31-262 and 128 N.A.C., Ch. 9 § 007.03; (3) failure to comply with universal waste requirements; (4) failure to comply with used oil requirements; (5) failure to comply with manifesting requirements for hazardous waste shipments; and (6) failure to provide notice to the State of Kansas.

By copy of this letter, the EPA is providing the states of Kansas and Nebraska with notice of the referenced violations of Subtitle C of RCRA as required by Section 3008(a)(2).



Printed on Recycled Paper

Proposed Civil Penalty and Opportunity to Confer

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes civil penalties for violations of RCRA. Pursuant to Section 3008, EPA considers the seriousness of the violation and any good faith efforts to comply with applicable requirements. To be fair and consistent in its assessment of penalties, the EPA uses the RCRA Civil Penalty Policy to calculate penalties. A link to this document is included in the Additional Sources of Information enclosure. Based on information currently available to the EPA, a proposed penalty of \$246,905 has been calculated for the violations identified at the six facilities. Enclosed for your review is the EPA's proposed penalty calculation worksheets. It is the EPA's intent to proceed with the filing of an administrative complaint and assessment of a civil penalty in this matter sometime within the next 60 days.

While the EPA believes that it is appropriate to proceed with a formal enforcement action, we also recognize that there may be information relevant to this matter that we are not aware of, and that a fair settlement of this matter may be better accomplished by conducting negotiations prior to the filing of a complaint. By this letter EPA is offering GBW the opportunity to negotiate a resolution of the proposed penalty before the complaint is filed. The settlement of this matter through payment of a civil penalty and any injunctive relief must be memorialized in a Consent Agreement and Final Order to be signed by an authorized representative of GBW and the EPA within the 60-day period. As part of these pre-filing negotiations, the EPA will explain the basis for the proposed penalty and will fully and fairly consider any information that GBW provides that is relevant to the penalty or violations. These pre-filing negotiations are an opportunity for you to discuss with the agency any information or circumstances that you believe may warrant a reduction in the penalty amount.

If GBW is interested in participating in pre-filing negotiations, please contact me within **14 calendar days** of your receipt of this letter at (913) 551-7110. If GBW chooses not to participate in pre-filing negotiations, does not contact me within the 14-day time period, or settlement is not reached within the 60-day pre-filing time period, the EPA intends to proceed with the filing of an administrative complaint.

Ability to Pay

If GBW believes that it does not have the financial ability to pay the EPA's proposed penalty and wants the EPA to consider GBW's financial condition, GBW must provide the EPA appropriate financial documentation to substantiate its claim **within the first 30 days** of the 60-day pre-filing negotiations period. Such documentation must include three years of signed federal income tax returns and audited financial statements, and a completed EPA financial ability to pay form. Please contact me for a copy of the form. Please note that review of these financial documents does not toll the 60-day pre-filing negotiations period.

Supplemental Environmental Projects

GBW may also wish to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project. A SEP is a project purchased or performed by GBW that provides significant environmental benefits and has a nexus to the environmental harm threatened or caused by the violations. A full description of the EPA's policy concerning the use of SEPs in settlement actions can be found at the link included in the Additional Sources of Information enclosure.

As indicated above, the EPA has determined that there are serious violations of RCRA at the GBW facilities cited above that warrant the assessment of a civil penalty. However, the EPA is committed to

working with GBW to resolve this matter and believes that pre-filing negotiations offer both parties an opportunity to reach settlement without protracted litigation. Your immediate attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me at (913) 551-7110, or Edwin Buckner, RCRA Compliance Officer, at (913) 551-7621.

Sincerely,



Kelley Catlin
Assistant Regional Counsel

Enclosures: Proposed Penalty Calculation Worksheet
Additional Sources of Information
SEC Notice

cc: William L. Bider, Director (e-copy)
Bureau of Waste Management
Kansas Department of Health and Environment

Ken Powell (e-copy)
Compliance and Enforcement, Waste Reduction, and Assistance Section
Kansas Department of Health and Environment

David Haldeman, Administrator (e-copy)
Waste Management Division
Nebraska Department of Environmental Quality

Jeff Edwards (e-copy)
Nebraska Department of Environmental Quality

Deron R. Smith
Director EHS Audit & Compliance
GBW Railcar Services
1160 Morgan Court
Park Hills, Kentucky 41011

Michael Check
Senior Director of EHS
GBW Railcar Services
1860 Humphrey
Birmingham, Michigan 48009

Nate Henderson
Senior Vice President of Operations
GBW Railcar Services
10895 Grandview Drive, Suite 350
Overland Park, Kansas 66210

Additional Sources of Information

- Information on RCRA and hazardous waste regulations:
<https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-regulations>
- Information on EPA's SEP policy:
<https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>
- Resource Conservation and Recovery Act (RCRA) Civil Penalty Policy
<https://www.epa.gov/enforcement/resource-conservation-and-recovery-act-rcra-civil-penalty-policy>
- Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22:
<https://www.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties>
- Information on Small Businesses and Enforcement
<https://www.epa.gov/compliance/small-business-resources-information-sheet>

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

For Settlement Purposes Only

PENALTY COMPUTATION WORKSHEET

GBW Railcar Services, LLC

COUNT NUMBER 1

Requirement Violated: Failure to Make Hazardous Waste Determinations
40 CFR 262.11

PENALTY AMOUNT FOR COMPLAINT

1.	Gravity based penalty from matrix	\$7,150	
	Potential for harm.....	moderate	m
	Extent of deviation.....	moderate	m
	Percent of cell range from matrix.....	50%	
	Total number of days of violation for multiple occurrences	6	
	Initial Gravity/Multiple Occurrence Penalty.....	<u>\$42,900</u>	
	[Multiply line 1 by number of days of multiple occurrences]		
2.	Amount from the appropriate multiday matrix cell	\$220	
	Potential for harm.....	minor	μ
	Extent of deviation.....	moderate	m
	Total days of violation (spreadsheet deducts gravity days for multi-day).....	29	
3.	Multiday matrix total.....	<u>\$5,060</u>	
	[Multiply line 2 by number of multi-days minus multiple occurrence days]		
4.	TOTAL INITIAL PENALTY.....	<u>\$47,960</u>	
	[Add gravity and multi-day]		
	Inflation Adjustment Factor.....	1.48287	
5.	TOTAL PENALTY ADJUSTED FOR INFLATION.....	<u>\$71,118</u>	
	[Multiply line 4 by Inflation Adjustment Factor]		
6.	Percent increase/decrease for good faith.....	0%	
7.	Percent increase/decrease for willfulness/negligence.....	0%	
8.	Percent increase for history of noncompliance.....	0%	
9.	Percent increase/decrease for other unique factors.....	0%	
10.	Total percent change.....	0%	
	Add lines 5 thru 7		
	Amount of penalty change.....	\$0	
11.	GRAVITY COMPONENT SUBTOTAL.....	<u>\$71,118</u>	
	Multiply line 5 by line 10		
12.	ECONOMIC BENEFIT	\$482	
13.	PENALTY AMOUNT FOR COMPLAINT.....	<u>\$71,601</u>	
	Add lines 5, 11, and 12		

For Settlement Purposes Only

PENALTY COMPUTATION WORKSHEET

GBW Railcar Services, LLC

COUNT NUMBER 2

Requirement Violated: Failure to Obtain RCRA Operating Permits
§ 3005 RCRA

PENALTY AMOUNT FOR COMPLAINT

1.	Gravity based penalty from matrix	\$7,150	
	Potential for harm.....	moderate	m
	Extent of deviation.....	moderate	m
	Percent of cell range from matrix.....	50%	
	Total number of days of violation for multiple occurrences	5	
	Initial Gravity/Multiple Occurrence Penalty.....	<u>\$35,750</u>	
	[Multiply line 1 by number of days of multiple occurrences]		
2.	Amount from the appropriate multiday matrix cell	\$1,018	
	Potential for harm.....	moderate	m
	Extent of deviation.....	moderate	m
	Total days of violation (spreadsheet deducts gravity days for multi-day).....	34	
3.	Multiday matrix total.....	<u>\$29,522</u>	
	[Multiply line 2 by number of multi-days minus multiple occurrence days]		
4.	TOTAL INITIAL PENALTY.....	<u>\$65,272</u>	
	[Add gravity and multi-day]		
	Inflation Adjustment Factor.....	1.48287	
5.	TOTAL PENALTY ADJUSTED FOR INFLATION.....	<u>\$96,790</u>	
	[Multiply line 4 by Inflation Adjustment Factor]		
6.	Percent increase/decrease for good faith.....	0%	
7.	Percent increase/decrease for willfulness/negligence.....	0%	
8.	Percent increase for history of noncompliance.....	0%	
9.	Percent increase/decrease for other unique factors.....	0%	
10.	Total percent change.....	0%	
	Add lines 5 thru 7		
	Amount of penalty change.....	\$0	
11.	GRAVITY COMPONENT SUBTOTAL.....	<u>\$96,790</u>	
	Multiply line 5 by line 10		
12.	ECONOMIC BENEFIT	<u>\$6,580</u>	
13.	PENALTY AMOUNT FOR COMPLAINT.....	\$103,370	
	Add lines 5, 11, and 12		

For Settlement Purposes Only

PENALTY COMPUTATION WORKSHEET

GBW Railcar Services, LLC

COUNT NUMBER 3

Requirement Violated: Failure to Properly Manage Universal Waste
40 CFR 273

PENALTY AMOUNT FOR COMPLAINT

1.	Gravity based penalty from matrix	\$330	
	Potential for harm.....	minor	μ
	Extent of deviation.....	minor	μ
	Percent of cell range from matrix.....	50%	
	Total number of days of violation for multiple occurrences	2	
	Initial Gravity/Multiple Occurrence Penalty.....	\$660	
	[Multiply line 1 by number of days of multiple occurrences]		
2.	Amount from the appropriate multiday matrix cell	\$110	
	Potential for harm.....	minor	μ
	Extent of deviation.....	minor	μ
	Total days of violation (spreadsheet deducts gravity days for multi-day).....	14	
3.	Multiday matrix total.....	\$1,320	
	[Multiply line 2 by number of multi-days minus multiple occurrence days]		
4.	TOTAL INITIAL PENALTY.....	\$1,980	
	[Add gravity and multi-day]		
	Inflation Adjustment Factor.....	1.48287	
5.	TOTAL PENALTY ADJUSTED FOR INFLATION.....	\$2,936	
	[Multiply line 4 by Inflation Adjustment Factor]		
6.	Percent increase/decrease for good faith.....	0%	
7.	Percent increase/decrease for willfulness/negligence.....	0%	
8.	Percent increase for history of noncompliance.....	0%	
9.	Percent increase/decrease for other unique factors.....	0%	
10.	Total percent change.....	0%	
	Add lines 5 thru 7		
	Amount of penalty change.....	\$0	
11.	GRAVITY COMPONENT SUBTOTAL.....	\$2,936	
	Multiply line 5 by line 10		
12.	ECONOMIC BENEFIT	\$0	
13.	PENALTY AMOUNT FOR COMPLAINT.....	\$2,936	
	Add lines 5, 11, and 12		

For Settlement Purposes Only

PENALTY COMPUTATION WORKSHEET

GBW Railcar Services, LLC

COUNT NUMBER 4

Requirement Violated: Failure to Properly Manage Used Oil
40 CFR 279

PENALTY AMOUNT FOR COMPLAINT

1.	Gravity based penalty from matrix	\$330	
	Potential for harm.....	minor	μ
	Extent of deviation.....	minor	μ
	Percent of cell range from matrix.....	50%	
	Total number of days of violation for multiple occurrences	4	
	Initial Gravity/Multiple Occurrence Penalty.....	<u>\$1,320</u>	
	[Multiply line 1 by number of days of multiple occurrences]		
2.	Amount from the appropriate multiday matrix cell	\$110	
	Potential for harm.....	minor	μ
	Extent of deviation.....	minor	μ
	Total days of violation (spreadsheet deducts gravity days for multi-day).....	10	
3.	Multiday matrix total.....	<u>\$660</u>	
	[Multiply line 2 by number of multi-days minus multiple occurrence days]		
4.	TOTAL INITIAL PENALTY.....	<u>\$1,980</u>	
	[Add gravity and multi-day]		
	Inflation Adjustment Factor.....	1.48287	
5.	TOTAL PENALTY ADJUSTED FOR INFLATION.....	<u>\$2,936</u>	
	[Multiply line 4 by Inflation Adjustment Factor]		
6.	Percent increase/decrease for good faith.....	0%	
7.	Percent increase/decrease for willfulness/negligence.....	0%	
8.	Percent increase for history of noncompliance.....	0%	
9.	Percent increase/decrease for other unique factors.....	0%	
10.	Total percent change.....	0%	
	Add lines 5 thru 7		
	Amount of penalty change.....	\$0	
11.	GRAVITY COMPONENT SUBTOTAL.....	<u>\$2,936</u>	
	Multiply line 5 by line 10		
12.	ECONOMIC BENEFIT	<u>\$0</u>	
13.	PENALTY AMOUNT FOR COMPLAINT.....	<u>\$2,936</u>	
	Add lines 5, 11, and 12		

For Settlement Purposes Only

PENALTY COMPUTATION WORKSHEET

GBW Railcar Services, LLC

COUNT NUMBER 5

Requirement Violated: Failure to Properly Manifest Hazardous Waste Shipments
40 CFR 262. 20(a) & 40(a); 40 CFR 268.7(a)(2)

PENALTY AMOUNT FOR COMPLAINT

1.	Gravity based penalty from matrix	\$7,150	
	Potential for harm.....	moderate	m
	Extent of deviation.....	moderate	m
	Percent of cell range from matrix.....	50%	
	Total number of days of violation for multiple occurrences	6	
	Initial Gravity/Multiple Occurrence Penalty.....	<u>\$42,900</u>	
	[Multiply line 1 by number of days of multiple occurrences]		
2.	Amount from the appropriate multiday matrix cell	\$110	
	Potential for harm.....	minor	μ
	Extent of deviation.....	minor	μ
	Total days of violation (spreadsheet deducts gravity days for multi-day).....	15	
3.	Multiday matrix total.....	<u>\$990</u>	
	[Multiply line 2 by number of multi-days minus multiple occurrence days]		
4.	TOTAL INITIAL PENALTY.....	<u>\$43,890</u>	
	[Add gravity and multi-day]		
	Inflation Adjustment Factor.....	1.48287	
5.	TOTAL PENALTY ADJUSTED FOR INFLATION.....	<u>\$65,083</u>	
	[Multiply line 4 by Inflation Adjustment Factor]		
6.	Percent increase/decrease for good faith.....	0%	
7.	Percent increase/decrease for willfulness/negligence.....	0%	
8.	Percent increase for history of noncompliance.....	0%	
9.	Percent increase/decrease for other unique factors.....	0%	
10.	Total percent change.....	0%	
	Add lines 5 thru 7		
	Amount of penalty change.....	\$0	
11.	GRAVITY COMPONENT SUBTOTAL.....	<u>\$65,083</u>	
	Multiply line 5 by line 10		
12.	ECONOMIC BENEFIT	<u>\$0</u>	
13.	PENALTY AMOUNT FOR COMPLAINT.....	<u>\$65,083</u>	
	Add lines 5, 11, and 12		

For Settlement Purposes Only

PENALTY COMPUTATION WORKSHEET

GBW Railcar Services, LLC

COUNT NUMBER 6

Requirement Violated: Failure to Provide Notifications
KAR 28-31-4

PENALTY AMOUNT FOR COMPLAINT

1.	Gravity based penalty from matrix	\$330	
	Potential for harm.....	minor	μ
	Extent of deviation.....	minor	μ
	Percent of cell range from matrix.....	50%	
	Total number of days of violation for multiple occurrences	2	
	Initial Gravity/Multiple Occurrence Penalty.....	\$660	
	[Multiply line 1 by number of days of multiple occurrences]		
2.	Amount from the appropriate multiday matrix cell	\$110	
	Potential for harm.....	minor	μ
	Extent of deviation.....	minor	μ
	Total days of violation (spreadsheet deducts gravity days for multi-day).....	2	
3.	Multiday matrix total.....	\$0	
	[Multiply line 2 by number of multi-days minus multiple occurrence days]		
4.	TOTAL INITIAL PENALTY.....	\$660	
	[Add gravity and multi-day]		
	Inflation Adjustment Factor.....	1.48287	
5.	TOTAL PENALTY ADJUSTED FOR INFLATION.....	\$979	
	[Multiply line 4 by Inflation Adjustment Factor]		
6.	Percent increase/decrease for good faith.....	0%	
7.	Percent increase/decrease for willfulness/negligence.....	0%	
8.	Percent increase for history of noncompliance.....	0%	
9.	Percent increase/decrease for other unique factors.....	0%	
10.	Total percent change.....	0%	
	Add lines 5 thru 7		
	Amount of penalty change.....	\$0	
11.	GRAVITY COMPONENT SUBTOTAL.....	\$979	
	Multiply line 5 by line 10		
12.	ECONOMIC BENEFIT	\$0	
13.	PENALTY AMOUNT FOR COMPLAINT.....	\$979	
	Add lines 5, 11, and 12		